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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SHERRILL FOSTER, HOWARD FOSTER, SHEILA BURTON, and MINNIE BURTON,	) No. C-07-5445-WHA
	)
Plaintiffs,	) <b>OPPOSITION TO MOTIONS TO</b>
	) <b>DISMISS AND TO MOTION FOR MORE</b>
	) <b>DEFINITE STATEMENT</b>
v.	)
	) [Jury Trial Demanded]
SHANNON EDMONDS, LORI TYLER,	)
COUNTY OF LAKE, CITY OF CLEARLAKE,	) Date: May 22, 2008
and DOES 1-100,	) Time: 8:00 a.m.
	) Honorable William H. Alsup
Defendants.	)
_____	)

1     **I.     INTRODUCTION**

2           On the early morning of December 7, 2005, Defendant Shannon Edmonds shot and killed  
3 two young men, in the back, as they ran across the street from the house in which Edmonds  
4 resided and which he co-owned with Defendant Lori Tyler in the City of Clearlake, County of  
5 Lake. Those two, young men are Christian Foster and Rashad Williams, and they were hit  
6 initially by Edmonds' fusillade far away from that house at 2922 11<sup>th</sup> Street in Clearlake.

7           Some believe Foster and Williams were at the 11<sup>th</sup> Street property to purchase marijuana,  
8 one of the several recreational drugs Edmonds distributed or dealt from his home. Edmonds  
9 himself has not been charged with a single crime in connection with the distribution of illegal  
10 drugs and the murders of Foster and Williams. Instead, Renato Hughes is being prosecuted by  
11 Lake County for the murders of Foster and Williams; though Edmonds never saw Hughes the  
12 night in question, Hughes was near the 11<sup>th</sup> Street house at the time Edmonds admittedly gunned  
13 down Foster and Williams. Foster, Williams, and Hughes are black; Edmonds is white.

14           The criminal case against Hughes continues to receive scrutiny from the media. Lake  
15 County is prosecuting Hughes under the "provocative act" theory.<sup>1</sup> It bears repeating: Despite  
16 the fact that Hughes was nowhere near the area where a fight allegedly took place, Hughes faces  
17 two felony murder charges; and, Lake County is not prosecuting Edmonds for any crime. Jon  
18 Hopkins, Lake County District Attorney, emphatically refuses to file charges against Edmonds.

19           Because the murder case against Hughes delayed receipt of critical data, meaningful  
20 information has been slow to come by in this civil case. However, the successors in interest to  
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24           <sup>1</sup>     The elements of the 'provocative act' murder are found in *People v. Gilbert* (1965) 63 Cal.2d 690  
25 [revd. on other grounds (1967) 388 U.S. 263]: "When the defendant or his accomplice, with a conscious disregard for  
26 life, intentionally commits an act that is likely to cause death, and his victim or a police officer kills in reasonable  
response to such act, the defendant is guilty of murder."

1 Foster and Williams, the plaintiffs here, filed this action October 24, 2007.<sup>2</sup> They amended their  
 2 complaint on December 7, 2007, with the filing of the first amended complaint (FAC).

3 Defendants Lake County and Clearlake move to dismiss under Federal Rules of Civil  
 4 Procedure, Rule 12(b)(6). Clearlake also seeks a more definite statement under Rule 12(e).

5 The motions should be denied, except as addressed below with regard to the state law  
 6 claims against these two entities and the Ninth Amendment claim. If the Court grants motions as  
 7 to the federal claims, Plaintiffs should be granted leave to amend; defects may be easily cured.<sup>3</sup>

## 8 **II. DISCUSSION AND OPPOSITION**

9 Under FRCP, Rule 8(a), Plaintiffs' complaint must provide "fair notice of what the  
 10 claims are and the grounds upon which they rest. *See, Swierkiewicz v. Sorema NA*, (2002) 534  
 11 US 506, 514. A motion to dismiss under Rule 12(b)(6) focuses on the legal sufficiency of the  
 12 complaint. Dismissal is proper only where the facts alleged fail to state any claim upon which  
 13 relief may be granted. All well pled facts in the complaint must be taken as true and all  
 14 reasonable inferences that may be drawn from those facts must be in Plaintiffs' favor. *See, e.g.,*  
 15 *Quality Mercury, Inc. v. Ford Motor Co.*, 542 F.2d 466, 468-469 (8<sup>th</sup> Cir. 1976).

### 16 **A. The State Law Claims Against These Two Defendants Should Be Dismissed.**

17 Lake County and Clearlake are correct: Plaintiffs failed properly to plead compliance  
 18 with the California Claims Act in the FAC. While Plaintiffs did in fact comply with the CCA,  
 19 more than six months passed following rejection of those claims before October 24, 2007.

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22 <sup>2</sup> Plaintiffs are the mother and father of Christian Foster, Sherrill Foster and Howard Foster; and, the  
 23 mother and grandmother of Rashad Williams, Sheila Burton and Minnie Burton. They sue here as successors in interest  
 and in their representative capacities. *See, e.g., Byrd v. Guess*, 137 F.3d 1126, 1131 (9<sup>th</sup> Cir. 1998).

24 <sup>3</sup> Plaintiffs oppose based on the May 22, 2008, hearing date. There was a stipulation circulating to  
 25 continue the hearing date and base all filing deadlines on the new date; however, Defendants appear to have abandoned  
 their desire to move the May 22<sup>nd</sup> date.

1 Thus, even if the Court permitted leave to amend to allege compliance, such an  
 2 amendment would only delay the inevitable. The State law claims thus survive as to the private  
 3 actors but not as to the municipal actors and agencies.

4 **B. The Federal Claims Should Not Be Dismissed.**

5 Plaintiffs have sued under 42 USC section 1983, which allows individuals to bring suit  
 6 against persons who, under color of state law, have caused them to be “depriv[ed] of any rights,  
 7 privileges, or immunities secured by the Constitution and laws” of the United States. 42 U.S.C.  
 8 §1983. In order to state a claim under §1983, Plaintiffs must allege (1) that the challenged  
 9 conduct was attributable at least in part to a person acting under color of state law, and (2) that  
 10 such conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution  
 11 or laws of the United States. *See, e.g., Rendell-Baker v. Kohn*, (1982) 457 U.S. 830, 835, 102  
 12 S.Ct. 2764, 2768; *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908, 1912.

13 A private individual may be subject to liability under this section if he or she willfully  
 14 collaborated with an official state actor in the deprivation of the federal right. *Adickes v. S.H.*  
 15 *Kress & Co.*, (1970) 398 U.S. 144, 150-152, 90 S.Ct. 1598, 1604-1605. “Private persons, jointly  
 16 engaged with state officials in the prohibited action, are acting ‘under color’ of law for purposes  
 17 of the statute.” *Id.* [citation]. Conversely, a state actor may be subject to liability for an action  
 18 physically undertaken by private actors in violation of the plaintiffs’ liberty or property rights if  
 19 the state actor directed or aided and abetted the violation. *See, e.g., Fries v. Barnes*, 618 F.2d  
 20 988, 991 (2d Cir. 1980). A physical beating by one who has no privilege of inflicting such  
 21 corporeal punishment intrudes on the victim’s liberty interests. *See. E.g., Ingraham v. Wright*,  
 22 (1977) 430 U.S. 651, 672-74, 97 S.Ct. 1401, 1413-14.

23 Here, as seen in the FAC and demonstrated below, pursuant to official customs and  
 24 practices with Clearlake and Lake County, Edmonds’ illegal activities were allowed, promoted,  
 25

1 and protected by local law enforcement. The murders of Foster and Williams was caused by  
2 these acts; the failures by local law enforcement to move against Edmonds sooner allowed him  
3 to engage in continued activity and emboldened him to such an extent that the murders of Foster  
4 and Williams were foreseeable and likely to occur.

5 While perhaps not stated well in the FAC, civil rights claims against the municipalities  
6 and their personnel arise here essentially from two types of activity. One type is the active  
7 assistance given to Edmonds by local law enforcement in furthering the crimes of illegal drug  
8 distribution. Investigation has uncovered the use by Edmonds of minors to sell drugs to other  
9 minors, activity which Lake County and Clearlake knew about and did nothing about  
10 *before* December 7, 2005.

11 The assistance given to Edmonds involves protection by members of the Clearlake Police  
12 Department; and, by Lake County's District Attorney and Sheriff Departments. While the  
13 investigation still is in its infancy, the peeling away of layer upon layer has started to reveal  
14 active participation by local law enforcement in Edmonds' activities from the 11<sup>th</sup> Street  
15 property, again *before* December 7, 2005.

16 Of course, after December 7, 2005, Edmonds has been protected and coddled by Lake  
17 County. Hopkins refuses to prosecute Edmonds in connection with the twin murders of Foster  
18 and Williams, who both were shot in the back, across the street from Edmonds' home.

19 Hopkins also refuses to prosecute Edmonds for two subsequent felonies, neither of which  
20 directly involve the sale and distribution of illegal narcotics. One such crime is the attempted  
21 murder of Tyler, which took place in August 2007. According to *Tyler*, Edmonds – who has also  
22 been accused of beating Tyler before and after December 7, 2005, but never prosecuted – forced  
23 Tyler to swallow numerous pills in an effort to kill Tyler, or force her to commit suicide. It is  
24 undisputed a case was never filed against Edmonds for this attempted murder; Plaintiffs are  
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1 informed and believe Clearlake Police refused to arrest Edmonds despite Tyler's accusations.

2 Then there is the destruction of evidence at the murder scene following the December 7,  
3 2005, double homicide. Members of the Clearlake Police Department, Lake County Sheriff  
4 Department, and Office of the District Attorney all allowed large amounts of illegal drugs to be  
5 removed from the 11<sup>th</sup> Street house and either destroyed or hidden. A trailer on the property was  
6 not searched and Defendants again allowed critical evidence to be secreted away.

7 Despite what has been portrayed as a massive and detailed search of Edmonds' home by  
8 law enforcement following the two murders, weapons were never found. Then, many days  
9 following December 7, 2005, Edmonds was allowed to return to his house and, within  
10 *seconds* mysteriously was able to locate a tool allegedly used by Foster or Williams in the  
11 ostensible attack on the night in question.

12 In one case, Erin Delew died when her bicycle was struck by a vehicle driven by Janet  
13 Kathleen Wagner. The Las Vegas Metropolitan Police Department ("LVMPD") and Nevada  
14 Highway Patrol ("NHP") ultimately found that Janet Kathleen Wagner was not the cause of Erin  
15 Rae Delew's death. Delews' heirs were not convinced. They alleged that Wagner, whose  
16 husband is an LVMPD officer, and certain other LVMPD and NHP officers, covered-up and  
17 conspired to cover-up the true facts surrounding Erin Rae Delews death in violation of the  
18 Delews' constitutional rights. The Ninth Circuit, in reversing the trial court, held as follows:

19 The Delews have indeed alleged a constitutional violation, namely, that the defendants  
20 violated the Delews' right of meaningful access to the courts by covering up the true facts  
21 surrounding Erin Rae Delew's death. The Supreme Court held long ago that the right of  
22 access to the courts is a fundamental right protected by the Constitution. [Citation] More  
23 recently, the Sixth Circuit held that the Constitution guarantees plaintiffs the right of  
24 meaningful access to the courts, the denial of which is established where a party engages  
25 in prefilings actions which effectively covers-up evidence and actually renders any state  
26 court remedies ineffective.<sup>4</sup> See *Swekel v. City of River Rouge*, 119 F.3d 1259, [1262](#) (6th  
Cir. 1997), cert. denied, 118 S. Ct. 690 (1998). . . .

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25 <sup>4</sup> As Plaintiffs' state claims here, against these defendants, were thus rendered.

1 To prevail on their claim, the Delews must demonstrate that the defendants' cover-up  
 2 violated their right of access to the courts. . . . The district court additionally erred by  
 3 holding that the Delews' conspiracy cover-up claim failed to state a claim for relief. In  
 4 support of their conspiracy claim, the Delews allege that Janet Kathleen Wagner left the  
 5 accident scene during the investigation and that the LVMPD and NHP officers permitted  
 6 Wagner to do so. Construing these facts in a light most favorable to the Delews, it is  
 7 reasonable to infer an understanding between Wagner and the officers to cover-up the  
 8 true facts of Erin Rae Delew's death and thereby deprive the Delews of their right of  
 9 access to the courts. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970) (. . . to  
 10 satisfy color of state law requirement under civil conspiracy theory, plaintiff need only  
 11 have shown that there was an understanding between civilian and officers to deprive  
 12 plaintiff of her rights). . . . *Delew v. Wagner*, 143 F.3d 1219, 1222-1223 (9<sup>th</sup> Cir. 1998).

8 Apprehension by the use of deadly force is a seizure subject to the reasonableness  
 9 requirement of the Fourth Amendment. *Tennessee v. Garner*, (1985) 471 U.S. 1, 7, 105 S.Ct.  
 10 1694. The nature and the quality of the individual's Fourth Amendment interests must be  
 11 balanced against countervailing governmental interests. *Id.* at 8, 105 S.Ct. at 1699; *United States*  
 12 *v. Place*, 462 U.S. 696, 703, 103 S.Ct. 2637, 2642 (1983). "[T]he 'reasonableness' inquiry in an  
 13 excessive force case is an objective one: the question is whether the officers' actions are  
 14 'objectively reasonable' in light of the facts and circumstances confronting them, without regard  
 15 to their underlying intent or motivation." *Graham v. Connor*, (1989) 490 U.S. 386, 396-397, 109  
 16 S.Ct. 1865, 1872; *see, also, Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102,  
 17 *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 343.

18 This inquiry, of whether the suspect posed "a threat of serious physical harm either to the  
 19 officer" or to others is usually a question of fact for the jury. *Sloman v. Tadlock*, 21 F.3d 1462,  
 20 1468 (9<sup>th</sup> Cir. 1994); *Hopkins v. Andaya*, 958 F.2d 881, 885 (9<sup>th</sup> Cir. 1992).

21 While the person who claims excessive force was directed at him or her can only raise a  
 22 fourth amendment claim, as can successors in interest, parents claiming loss of companionship  
 23 and society of his or her child raise a different constitutional claim. The Ninth Circuit recognizes  
 24 that a parent has a constitutionally protected liberty interest under the Fourteenth Amendment in  
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1 the companionship and society of his or her child. *See, Strandberg v. City of Helena*, 791 F.2d  
2 744, 748 (9<sup>th</sup> Cir. 1986); *Kelson v. City of Springfield*, 767 F.2d 651, 653-55 (9th Cir. 1985).

3 Thus, Plaintiffs here have pled claims under the First, Fourth, and Fourteenth  
4 Amendments. References to the Ninth Amendment in the FAC are incorrect.

5 **C. The Request For More Definite Statement Should Be Denied.**

6 Somewhere, somehow over the past few years defendants in civil rights cases began  
7 arguing for a heightened pleading standard. Though that standard had been rejected by the  
8 United States Supreme Court in all but rare cases, and though many such defendants do not refer  
9 to a “heightened pleading standard,” the truth is that it is such a standard sought to be enforced.

10 The United States Supreme Court has repeatedly instructed lower courts not to impose  
11 heightened standards in the absence of an explicit requirement in a statute or federal rule.  
12 *Swierkiewicz v. Sorema N.A.*, (2002) 534 U.S. 506, 515, 122 S.Ct. 992 [rejecting heightened  
13 pleading standard for Title VII employment discrimination suits]; and, *Leatherman v. Tarrant*  
14 *County Narcotics Intelligence & Coordination Unit*, (1993) 507 U.S. 163, 164, 113 S.Ct. 1160  
15 [rejecting heightened pleading standard for §1983 suits asserting municipal liability].

16 A motion under FRCP Rule 12(e), for a more definite statement, cannot be a substitute  
17 for the discovery process in view of the liberal notice pleading standard and the availability of  
18 extensive discovery. *See, Frederick v. Kozial*, (ED Va. 199) 727 F.Supp. 1019, 1020-1021.  
19 Rule 12(e) is designed to reach unintelligibility, not lack of detail. *See, Scarbrough v. R-Way*  
20 *Furniture Co.*, (ED Wis. 1985) 105 FRD 90, 91. The defense appears to seek additional detail  
21 despite the liberal pleading standards of the Federal Rules. Thus, the motion under Rule 12(e)  
22 should be denied. Plaintiffs have given notice of the nature of the claims against Defendants.

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**D. If The Court Grants The Motion To Dismiss The Federal Claims As To These Municipal Defendants, Leave To Amend Should Be Granted.**

Plaintiffs should be permitted leave to amend if the Court (a) finds that Plaintiffs need additional facts to state claims upon which relief may be granted, and (b) grants the motions under Rule 12(b)(6). Federal Rules of Civil Procedure, Rule 15(a) is very liberal and leave to amend “shall be freely given when justice so requires.” *See, Bowles v. Reade*, 198 F.3d 752, 757 (9<sup>th</sup> Cir.1999). “Dismissal without leave to amend is improper unless it is clear, . . ., that the complaint could not be saved by any amendment.” *Vasquez v. Los Angeles County*, 487 F.3d 1246, 1258 (9<sup>th</sup> Cir. 2007). As illustrated above, Plaintiffs are able to state claims federal law; facts in support of their claims may be stated.

**III. CONCLUSION**

A private actor killed two men, through the use of excessive force. That actor had been supported, protected, and coddled by local law enforcement. The two murders were the natural and foreseeable result of this cozy and unholy alliance.

After the double homicide, law enforcement destroyed the survivors’ ability to pursue certain state remedies. These municipal entities and actors aided and abetted the killer with a cover-up and other acts designed to thwart and to frustrate the Plaintiffs. The killer continues to receive protection from his friend and allies in law enforcement.

The motions should be denied, except as outlined above. If granted, leave to amend should be given. Any defects are easily cured.

Date: May 1, 2008

/s/Russell A. Robinson

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